

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KRISTINA NELSON AND
DARREN NELSON
1601 Alpine Drive
Janesville, WI 53546,

COMPLAINT

Plaintiffs,

Case No. 2014 CV 719

and

MERCYCARE INSURANCE
COMPANY, INC.
330 S. Wright Road
Janesville, WI 53546-2303,

Involuntary Plaintiff,

vs.

WALMART STORES, INC.
702 S.W. 8th Street
Bentonville, AR 72712-6209

Defendant.

Plaintiffs above named, by and through their attorneys, Nowlan & Mouat LLP, by Attorney Steven T. Caya, allege as follows:

NATURE OF PROCEEDINGS

1. This is a civil action to recover damages arising out of a slip and fall incident that occurred at a Walmart Store located in Janesville, Wisconsin on July 15, 2014. On that date, Kristina Nelson slipped and fell as she attempted to enter the Walmart Store. As a result of the slip and fall, Kristina Nelson suffered serious leg injuries that required surgery and a lengthy hospital stay. In addition, Kristina Nelson has incurred substantial medical expenses. Her husband, Darren Nelson, has suffered the loss of the society and companionship of his wife, Kristina Nelson.

PARTIES

2. Plaintiff, Kristina Nelson, is an adult citizen of the State of Wisconsin who resides at 1601 Alpine Drive, Janesville, Wisconsin 53546. Kristina Nelson is the spouse of Darren Nelson.

3. Plaintiff, Darren Nelson, is an adult citizen of the State of Wisconsin who resides at 1601 Alpine Drive, Janesville, Wisconsin 53546. Darren Nelson is the spouse of Kristina Nelson.

4. Mercycare Insurance Company, Inc. (hereinafter “Mercycare”), is a Wisconsin corporation whose principal place of business is located at 330 S. Wright Road, Janesville, Wisconsin 53546. At all times material, Mercycare had in full force and effect a health insurance policy that provided coverage for medical expenses incurred by Kristina Nelson as a result of the subject incident. By operation of said policy, Mercycare may claim a right of subrogation/reimbursement and, therefore, is a necessary and proper party to this action.

5. Defendant, Walmart Stores, Inc. (hereinafter “Walmart”), is a Delaware corporation whose principal place of business is located at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Walmart is in the retail business and engages in substantial business activities within the State of Wisconsin. At all times material, Walmart was the owner of a Walmart store located in Janesville, Wisconsin.

JURISDICTION AND VENUE

6. This court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(1) as the parties to this dispute are citizens of different states and the matter in controversy exceeds \$75,000.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(3) as Walmart engages in substantial business activities within the State of Wisconsin and the Western District of Wisconsin and the subject incident occurred within the Western District of Wisconsin.

FACTS

8. On or about July 15, 2014, Kristina Nelson traveled to the Walmart store in Janesville intending to purchase consumer goods from Walmart.

9. On that same date, as Kristina Nelson attempted to enter the outdoor living center, she slipped and fell just after walking through the entryway to the Walmart store located in Janesville, Wisconsin.

10. As a result of said slip and fall, Kristina Nelson sustained serious injuries.

FIRST CAUSE OF ACTION – WISCONSIN SAFE PLACE STATUTE

11. Plaintiffs reallege and incorporate by reference as if fully set forth herein paragraphs 1 through 10 of Plaintiffs' Complaint.

12. At and before the time the Plaintiff, Kristina Nelson, was injured at the Walmart store located in Janesville, Wisconsin, the premises constituted a public building and a place of employment subject to the provisions of §101.11, Wis. Stats., commonly referred to as the Wisconsin Safe Place Statute.

13. At and before the time the Plaintiff, Kristina Nelson, was injured on the subject premises on July 15, 2014, Walmart violated the Safe Place Statute by failing to take all reasonable steps to provide for the safety of the Plaintiff, Kristina Nelson, including, but not limited to, maintaining the entryway floor in a manner that would prevent customers from slipping and falling on moisture during rainfall.

14. The violation of the Safe Place Statute by Walmart proximately caused Kristina Nelson's fall and all of the injuries, damages, and claims as set forth hereafter.

15. As a direct result of the violation of the Safe Place Statute by Walmart, Kristina Nelson suffered physical injuries. She has incurred medical expenses and will incur future medical expenses. She has experienced pain and suffering and will experience pain and suffering in the future. She has also lost wages and may also incur a future loss of earning capacity.

16. As a direct result of the violation of the Wisconsin Safe Place Statute by Walmart, Plaintiff, Darren Nelson, has suffered the loss of the society and companionship of his wife, Kristina Nelson.

SECOND CAUSE OF ACTION – CLAIM OF NEGLIGENCE

17. Plaintiffs reallege and incorporate by reference as if fully set forth herein paragraphs 1 through 16 of Plaintiff's Complaint.

18. At and before the time Plaintiff, Kristina Nelson, slipped on water located on the entryway floor of the Walmart store in Janesville, Wisconsin, Walmart was negligent in failing to take reasonable steps that would prevent customers such as Kristina Nelson from slipping and falling on wet floors as they entered the Walmart store in Janesville, Wisconsin.

19. The negligence of Walmart proximately caused Kristina Nelson's slip and fall and all of the injuries, damages, and claims as set forth hereafter.

20. As a direct result of the negligence of Walmart, Plaintiff, Kristina Nelson, suffered physical injuries. She has also incurred medical expenses and may incur future medical expenses. She has also experienced pain and suffering and will experience pain and suffering in the future. She has also lost wages and will also incur future wage loss and loss of earning capacity.

21. As a direct result of the negligence of Walmart, Plaintiff, Darren Nelson, has suffered the loss of the society and companionship of his wife, Kristina Nelson.

22. THEREFORE, Plaintiff, Kristina Nelson, demands judgment against Walmart in an amount in excess of \$75,000 which will fully and fairly compensate Plaintiff, Kristina Nelson, for her injuries, damages and costs.

23. Darren Nelson has suffered the loss of his wife, Kristina Nelson's, society and companionship.

24. Therefore, Plaintiff, Darren Nelson, demands judgment against Walmart in an amount in excess of \$75,000 which will fully and fairly compensate Plaintiff, Darren Nelson, for the loss of society and companionship of Kristina Nelson.

DATED this 20th day of October, 2014.

By: /s/ Steven T. Caya
Steven T. Caya, State Bar No. 1019596

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PLAINTIFFS REQUEST A TRIAL BY JURY